STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

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Chief
Marine Mammal Conservation Division
Office of Protected Resources
National Marine Fisheries Service (F/PR2)
U.S. Department of Commerce
1315 East-West Highway
Silver Spring, MD 20910

RE: 50 CFR Part 229 [Docket No. 030630163-4122-02, I.D. 052303F]

Dear Chief:

The Alaska Department of Fish and Game (ADF&G) is pleased to provide comments on rulemaking for the Zero Mortality Rate Goal (ZMRG) of the Marine Mammal Protection Act.

ADF&G supports the rationale behind the Proposed Rule (PR) that would set the default target level of mortality and serious injury of marine mammals incidental to commercial fishing operations to satisfy the ZMRG at 10 percent of any stock's Potential Biological Removal (PBR), in most situations. We believe the PR meets the intent of the Marine Mammal Protection Act's Section 118 to reduce incidental mortality and serious injury of marine mammals, while taking into consideration available technology and the economics of fisheries, as well as state or regional fishery management plans.

While the ZMRG as described in the proposed rule is a reasonable means to protect marine mammals, accurate estimates of marine mammal mortality incidental to commercial fisheries are required to ensure that application of the ZMRG provides the proper level of protection for marine mammals without causing undue restrictions to commercial fisheries. The information available on the current level of incidental mortality in Alaska fisheries is minimal, and thus must be increased to provide more accurate estimates of incidental mortality and subsequently ZMRG. Specifically, this will require increased observer coverage for those fisheries that have the greatest potential to cause incidental mortality and serious injury of marine mammals, and we strongly encourage such increased coverage be initiated as soon as possible.

The PR states that NMFS proposes to use an adjustment, generally a reduction, of insignificance thresholds to address situations where relatively small levels of fisheries-related mortality and serious injury take on added significance when considered in combination with other factors that may be affecting a stock. Similarly, we believe that when incidental mortality and serious injury rates exceed 10 percent of the PBR for a marine mammal stock, there are two factors that should be thoroughly evaluated prior to the establishment of a Take Reduction Team (TRT) and development of a Take Reduction Plan (TRP). Specifically:

Outdated estimated levels of incidental mortality and serious injury

Although mortality estimates are calculated on the most recent five years of available data, most of the current highest annual reported levels of incidental mortality in Alaska are based primarily on information over ten years old. For example, mean annual mortality estimates for the Prince William Sound salmon drift gillnet fishery are from 1990-91: western Steller sea lions – 14.5 animals; Gulf of Alaska harbor seals – 24 animals; and Gulf of Alaska harbor porpoise – 20 animals. Similarly, the mean annual mortality estimate for the Alaska Peninsula-Aleutian Island salmon drift gillnet fishery for Dall's porpoise – 28 – is from 1990, and for the Bristol Bay salmon drift gillnet fishery for Bering Sea harbor seals – 26, from 1990-1996. Current information on incidental mortality for these fisheries is required to calculate a more accurate and reasonable estimate of the total incidental mortality. Changes have been made to some fisheries (e.g., Prince William Sound salmon drift gillnet) that have likely reduced incidental mortality, such as heightened awareness of marine mammal mortality following implementation of the law making it illegal to shoot marine mammals. Due to the economic costs of decreased productivity and gear replacement—as well as the harm to the mammals themselves—fishermen have also responded by changing their gear, methods, and fishing locations. Incidental mortality estimates must be current in order to account for such changes.

Substantial uncertainty in the estimate of population abundance for marine mammals

Recognizing the need for a precautionary approach due to uncertainty, the PBR calculation uses a minimum estimate of population abundance (N_{min}). This approach provides an incentive to improve the precision of the estimates of abundance, because PBR will increase with decreased variation. However, in some cases N_{min} is based on data that does not include substantial portions of a stock's range; e.g., Dall's porpoise, Gulf of Alaska harbor porpoise, and eastern North Pacific transient and resident killer whales.

We believe a review of these, and other factors prior to establishing a TRT is necessary to ensure that a realistic insignificance threshold is determined. In addition, such review may suggest that an adjustment to the insignificant threshold would be prudent to be consistent with the legislative history of the Act that repeatedly references Congressional intent to avoid shutting down fisheries or creating an overwhelming economic burden on fisheries to achieve insignificant levels of marine mammal mortality.

Several of Alaska's fisheries are at potential risk. The outdated information used to quantify impacts on marine mammals—coupled with wide confidence intervals bracketing such information—creates an inappropriately high potential for unacceptable impacts to some Alaska

fisheries. Although important for all stocks and fisheries, this can become especially pertinent when a fishery's ZMRG is in single digits; it is imperative that the data on interaction with marine mammals be validated and that current circumstances surrounding each fishery are examined before implementing actions to assure an appropriate outcome.

Sincerely,

Kevin C. Duffy

Kevin C. Duffy
Commissioner